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KEITH S. WATSON

July 2, 1986

VIA FEDERAL EXPRESS

✓George A. Shanahan, Esquire
Water Enforcement Branch
U.S. Environmental Protection
Agency - Region II
26 Federal Plaza
New York, NY 10278

Ann L. Goldweber, Esquire
Assistant Attorney General
New York State Department of Law
Environmental Enforcement Bureau
2 World Trade Center, 45th Floor
New York, NY 10047

Dear George and Ann:

I am enclosing a redrafted Stipulation and attached schedules.

Regarding the Stipulation itself, the following comments are in order: The only remaining disagreements are on the final phrases of Paragraph 4 and the final sentence of subparagraph 9(a). Please note we have modified our proposal in the final sentence of Paragraph 9(a). Subparagraph 10(c) contains substitute language in brackets, as we discussed. In addition, a new, lengthy sentence has been added to subparagraph 10(e) to help explain the schedule as it relates to early activities on corrective action. Finally, no effort has been made yet to purge references to "paragraphs" in lieu of "sub-paragraphs."

Regarding the attached schedules, I did the best I could, but in some cases my notes (or the underlying discussion) were not models of clarity. In Attachment B, the schedule reflects some corrective action dates that have yet to be reviewed by OCC personnel and, of course, have not been approved by EPA/State.

George A. Shanahan, Esquire
Ann L. Goldweber, Esquire
July 2, 1986
Page Two

We believe that this draft reflects considerable progress and we remain hopeful that a Stipulation can be executed and filed with the Court by July 16, 1986, so that the DEIS can be noticed on that date.

Sincerely yours,


Keith S. Watson

KSW/bjw
Enclosures

cc: Mr. James W. Dolen (w/enclosure)
Mr. John R. Nichter (w/enclosure)
Martin B. Wasser, Esquire (w/enclosure)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
THE STATE OF NEW YORK,

Plaintiffs,

v.

HOOKEE CHEMICALS & PLASTICS
CORP.; THE TOWN OF LEWISTON;
and THE TOWN OF NIAGARA,
(Hyde Park Landfill)

Defendants.

Civil Action No. 79-989(C)

STIPULATION AND ORDER ON PROCEDURES
CONCERNING INCINERATION OF HYDE PARK NAPL

The undersigned parties to the above-captioned action -- the United States of America ("EPA"), the State of New York ("State"), and Occidental Chemical Corporation ("OCC"), the corporate successor of Hooker Chemicals & Plastics Corp. -- hereby agree as follows:

1. On November 26, 1985, EPA/State and OCC filed with the Court a "Stipulation on Requisite Remedial Technology" ("RRT Stipulation"), an Agreement relating thereto and a Memorandum of Understanding relating to incineration of non-aqueous phase liquids ("NAPL") collected by remedial systems at the

Hyde Park landfill pursuant to the RRT Stipulation and the Hyde Park Settlement Agreement approved by the Court in April, 1982 ("Settlement Agreement").

2. A collection system installed in 1978 in the overburden at the perimeter of the Hyde Park landfill has over the past two years collected an estimated average of approximately 2,000 gallons of NAPL per month. The NAPL collected by the existing system is pumped to storage facilities located at the Hyde Park landfill site. These facilities consist of two lagoons installed in 1978 and four temporary bulk storage containers installed in 1984. The storage containers have no remaining capacity. It is estimated that capacity for storage of additional collected NAPL in the lagoons could be exhausted within one year. Therefore, in accordance with the Settlement Agreement, Addendum I, Subparagraph D(6), during the 1986 construction season OCC plans to initiate construction of an on-site permanent storage facility capable of storing approximately ^{320,000 gallons} ~~160,000~~ gallons of collected NAPL ^{and Aqueous Phase Liquids (APL).} While this installation will provide interim relief, the Settlement Agreement and RRT Stipulation provide that on-site NAPL storage will be temporary and that NAPL collected and temporarily stored on-site must be transported off-site for incineration.

3. The RRT Stipulation requires that OCC install collection systems in the overburden and bedrock which are more extensive in depth and in areal coverage and which therefore

are expected to collect significantly larger volumes of NAPL than the existing collection system. The Settlement Agreement and the RRT Stipulation do not require OCC to install or operate remedial systems which collect NAPL until there are approved facilities available to incinerate the NAPL. If such incineration facilities become available and the Court has approved the RRT Stipulation, OCC is required to proceed expeditiously to initiate installation and operation of collection systems required by the RRT Stipulation.

4. In view of the foregoing, unless approved facilities become available to incinerate Hyde Park NAPL, the off-site transportation and disposal of collected NAPL and plans to install and operate collection systems required by the RRT Stipulation will be delayed and the timely implementation of the Settlement Agreement and RRT Stipulation will be thereby jeopardized.

OCC wants
language in;
State wants
language
deleted;
EPA can accept
either.

5. Hyde Park NAPL contains a number of chemical compounds regulated under the Resource Conservation and Recovery Act ("RCRA") and the Toxic Substances Control Act ("TSCA") and state law, including liquid wastes containing tetra, penta, or hexachloro-dibenzo-p-dioxins (PCDD or PCDD waste), and Polychlorinated Biphenyls ("PCBs"). There are no incinerators within New York State which are currently permitted to accept
→ Hyde Park NAPL or any other liquid wastes containing PCDDs. On a national level, no commercial incinerator has been permitted

by EPA to accept PCDD wastes, and no other disposal technologies have been identified and demonstrated to be protective of human health and the environment in the management of these wastes. (See EPA, Hazardous Waste Management System; Land Disposal Restrictions (proposed), 51 Fed. Reg. 1602, at 1734 (Jan. 14, 1986).) OCC previously sought to contract with commercial incinerators to accept Hyde Park NAPL, but its efforts were unsuccessful.

6. If the existing hazardous waste incinerator at OCC's Buffalo Avenue plant in Niagara Falls ("OCC incinerator") is capable of performing in accordance with all applicable statutory and regulatory requirements designed to protect human health and the environment, the OCC incinerator is the preferred facility for the incineration of NAPL collected by the Hyde Park remedial systems. The OCC incinerator is currently permitted to incinerate a number of chemical compounds, but these do not include PCBs over 50 parts per million (ppm) or detectable quantities of 2,3,7,8-Tetrachlorodibenzo-p-dioxin ("2,3,7,8-TCDD"). All of the major known organic compounds of the Hyde Park NAPL have been demonstrated to be capable of being destroyed by incineration, including the destruction of 2,3,7,8-TCDD to 99.9999% destruction and removal efficiency ("DRE"). Based on the EPA incinerability hierarchy (which takes account of heats of combustion of many chemicals), PCBs and PCDD are easier to incinerate than some of the organic

chemicals currently permitted to be incinerated at the OCC incinerator. OCC and its technical consultants therefore believe that the incinerator is capable of destroying PCB and PCDD wastes in an effective, environmentally sound manner.

7. (a) The federal and state governments have determined that, prior to a final determination on its application to incinerate wastes containing PCBs and PCDD, OCC must conduct a series of short-term trial burns to demonstrate the incinerator's capability to destroy such wastes in a manner which satisfies all applicable statutory and regulatory requirements and fully protects human health and the environment. Three types of trial burns will be conducted in accordance with the schedule set forth in Attachment A; the burns themselves will last a total of about 144 hours. The first type of trial burn will use process waste generated at OCC's Buffalo Avenue plant currently incinerated pursuant to State permits and federal interim status authorization under RCRA. The process waste materials will not include PCBs at concentrations greater than 50 ppm or PCDD. The second type of trial burn will use materials containing PCBs over 50 ppm; and the third type of trial burn will use NAPL from Hyde Park containing PCDD and PCBs. The second trial burn will be conducted immediately after the first. The third trial burn -- involving NAPL from Hyde Park containing PCDD and PCBs -- will be conducted only after the first two trial burns have been satisfactorily completed, as described in subparagraphs (b) and (c)

below, and the results thereof have been assessed by EPA/State and OCC.

(b) The first two trial burns shall be deemed to have satisfied the trial burn plan referenced in Paragraph 8, and all regulatory prerequisites for conducting the NAPL trial burn with waste materials containing PCDD and PCBs will be deemed satisfied when each of the conditions described in this subparagraph (b) and subparagraph (c) are satisfied: OCC conducts these first two trial burns on process waste and PCB waste in accordance with such trial burn plan (including any modifications to such trial burn plan made as a result of the public comment and environmental impact assessment processes described in Paragraph 11 below); OCC makes the determinations described in 40 C.F.R. § 270.62(b)(6)(i)-(ix) and 6 NYCRR § 373-1.9(a)(2)(vi)(a)-(i) as provided in such trial burn plan; OCC makes the submissions described in 40 C.F.R. § 270.62(b)(7)-(9) and 6 NYCRR § 373-1.9(a)(2)(vii)-(ix); and the following performance standards are met during the trial burns on process waste and PCB waste:

- (i) the process waste trial burn has achieved a 99.99% DRE for the three principal organic hazardous constituents (POHCs) designated in the trial burn plan described in Paragraph 8 -- tetra-chloroethylene, carbon tetrachloride and hexachlorocyclopentadiene -- and this trial burn has satisfied all other applicable performance standards specified in 40 C.F.R. § 264.343(a)-(c) and 6 NYCRR § 373.2.15(d)(1)-(3).

- (ii) the PCB trial burn has satisfied all the performance standards specified in 40 C.F.R. § 761.70(a) and 6 NYCRR § 373-2.15(d)(1)-(3) and achieved a DRE of 99.9999% for trichloroethylene and satisfied all other applicable performance standards specified in 40 C.F.R. § 264.343(a)-(c) and 6 NYCRR § 373-2.15(d)(1)-(3).

(c) OCC shall conduct the NAPL trial burn if the prerequisites described in subparagraph (b) have been satisfied, unless either of the following occurs: a material change in relevant factors occurs after final EPA/State approval of the trial burn plan and such change requires withdrawal by EPA/State of the determinations described in 40 C.F.R.

§ 270.62(b)(5)(ii) and 6 NYCRR § 373-1.9(a)(2)(v)(b); or a material change in relevant factors occurs after issuance of the Final Environmental Impact Statement ("FEIS") for the PCB trial burn and of findings relating thereto by the New York State Department of Environmental Conservation ("NYSDEC") described in 6 NYCRR § 617.9(c) and such change requires modification of the FEIS or withdrawal of such findings. As used herein, a "material change" shall be deemed to include, without limitation, a circumstance in which emissions data collected during the PCB trial burn indicates that emission rates measured during the PCB trial burn significantly exceeded the highest emission rates assumed for risk assessment purposes in the FEIS. If EPA/State conclude that a material change has occurred which requires a withdrawal or modification as

described above, OCC and the Court shall be so notified at least 21 days prior to the scheduled date of the NAPL trial burn. Unless the parties file with the Court a stipulation which resolves all issues raised by such notification within seven days following such notification, the parties may proceed in accordance with any rights which they may have pursuant to federal and state law and regulations, the Settlement Agreement, the RRT Stipulation, and any other documents filed in this proceeding. Nothing herein shall be construed to change or modify the provisions of 40 C.F.R. § 270.62(b)(5)(ii), 6 NYCRR § 373-1.9(a)(2)(v)(b) or 6 NYCRR § 617.9(c).

(d) The NAPL trial burn shall be deemed to have satisfied the trial burn plan described in Paragraph 8 when each of the following conditions are satisfied: OCC conducts the NAPL trial burn in accordance with such trial burn plan (including any modifications to such trial burn plan made as a result of the public comment and environmental impact assessment processes described in subparagraph (c) and Paragraph 11 below); OCC makes the determinations described in 40 C.F.R. § 270.62(b)(6)(i)-(ix) and 6 NYCRR § 373-1.9(a)(2)(vi)(a)-(i) as provided in such trial burn plan; OCC makes the submissions described in 40 C.F.R. § 270.62(b)(7)-(9) and 6 NYCRR § 373-1.9(a)(2)(vii)-(ix); and the following performance standards are met during the NAPL trial burn:

- (i) the NAPL trial burn has achieved a DRE of 99.9999% for 1,1,1-trichloroethane and 99.99% for carbon tetrachloride;

- (ii) the NAPL trial burn has satisfied all other applicable performance standards specified in 40 C.F.R. § 264.343(a)-(c) and 6 NYCRR § 373-2.15(d)(1)-(3).

(e) It is the intent of the parties at this time that, prior to the final governmental determination on the applications described in subparagraphs 10(b) and (c), no additional trial burns will be necessary on wastes utilized in the trial burns if the three trial burns described herein are completed and the prerequisites described in this Paragraph are satisfied. Any final permit or authorization issued pursuant to such applications will include conditions specifying procedures for characterization of waste streams authorized by the permit or authorization but not fully characterized at the time of the issuance of such permit or authorization that are sufficient to demonstrate that these waste streams conform to the waste feed limitations in such final permit or authorization and may provide for trial burns on such waste streams if such demonstration is not made; provided, however, that EPA/State acknowledges that waste streams to be utilized in the trial burns will have been fully characterized for the purpose of permitting and that further characterization may be required at specified frequencies as a condition of the permit. Accordingly, except as provided above, no additional trial burns shall be required to complete or process OCC's applications described in subparagraphs 10(b) and (c) if the three trial burns described herein are completed and the prerequisites

described in this Paragraph are satisfied, unless each of the following circumstances occur: A material change in relevant factors occurs after final EPA/State approval of the trial burn plan, such change requires obtaining additional information necessary to issue required permits and/or authorizations for the OCC incinerator, and an additional trial burn is the only practicable method available to obtain such information. If EPA/State conclude that such circumstances have occurred and an additional trial burn is required, OCC and the Court shall be so notified no later than the dates specified in the schedule set forth in Attachment A. Notwithstanding the aforementioned notification deadlines, if, as a result of new information received during the EPA/State hearings and public comment procedures (other than during a State adjudicatory hearing process) described in the attached schedules, EPA/State conclude that an additional trial burn is required prior to issuance of final governmental permits or authorizations for which the trial burn is conducted, OCC and the Court shall be so notified within 14 days after EPA/State's receipt of such new information. Unless the parties file with the Court a stipulation which resolves all issues raised by such notification within seven working days following such notification, the parties may proceed as described in subparagraph 7(c). If such information is received during a State adjudicatory hearing, such notification should be made as soon as practicable, but in

no event later than seven days after issuance of a decision in that hearing. Unless the parties resolve all issues by such notification within seven working days following such notification and so inform the Court, the parties may proceed as described in subparagraph 7(c).

(f) Data collected during the trial burns will be utilized in the governments' final determinations concerning OCC's applications described in subparagraphs 10(b) and (c). Nothing in this Stipulation shall be deemed to prejudge the issues of whether and/or under what conditions EPA/State may issue permits and/or other authorizations to incinerate Hyde Park NAPL and other wastes and the determinations required by the environmental impact assessment process. Such issues include, without limitation, whether periodic trial burns should be conducted during operation of the OCC incinerator following issuance of required permits and/or authorizations for such operation and whether trial burns should be conducted if new waste streams are proposed for incineration.

8. Subject to the public comment and environmental impact assessment processes described in Paragraph 11 below, EPA/State deem the trial burn plan for the OCC incinerator, dated July __, 1986, to be complete and in accordance with applicable statutory and regulatory requirements.

9. (a) EPA/State will use their best efforts to enable a final determination to be made concerning all governmental authorizations required for long-term use (i.e., permitted operation) of the OCC incinerator to incinerate PCB and PCDD wastes by the date specified in Attachment A; provided, however, that such date may be extended by agreement of the parties hereto or by order of the Court. OCC will also use its best efforts to supply all necessary information to process required permit applications and other authorizations in an expeditious manner. Notwithstanding the schedules set forth in Attachments A and B, EPA/State and OCC will continue to discuss ways to expedite processing the permits and authorizations for incineration of PCB and PCDD wastes and implementing the remedial activities described in the RRT Stipulation. [EPA/State will not require OCC to utilize another facility to incinerate Hyde Park NAPL prior to the aforementioned final determination by EPA/State; provided, however, that after August 1, 1987, this provision may be modified by agreement of the parties or order of the Court if necessary to prevent an unreasonable delay in the installation of the Overburden Barrier Collection System;] provided further, however, that this limitation shall not apply if the circumstances described in Paragraph 5 of the Memorandum of Understanding occur.

unresolved

(b) If any of the trial burn dates described in Attachments A and B are delayed, there would be consequential

delays in determining whether or not OCC's incinerator is capable of destroying PCB and PCDD wastes in accordance with all applicable statutory and regulatory requirements designed to protect human health and the environment and in issuing the required governmental authorizations. Specifically, if successful demonstration of the incinerator's capability were delayed, there could be no assurance that OCC would be able to obtain all necessary governmental authorizations required to incinerate Hyde Park NAPL at OCC's incinerator prior to the anticipated start-up date of remedial systems required by the RRT Stipulation. Likewise, efforts to locate an alternative facility and obtain governmental approvals to incinerate these materials would be delayed by postponement of the trial burns if the trial burns demonstrate that the OCC incinerator is incapable of effectively destroying these wastes.

10. To enable the trial burns and the governmental review and public comment processes to be completed on a schedule which would enable the final governmental determinations to be made as described in subparagraph 9(a) and to preclude the delays described in subparagraph 9(b), EPA/State and OCC will take the actions described in the subparagraphs below:

(a) Within 14 days after the filing of this Stipulation and Order, the NYSDEC will issue to OCC a renewal of its existing air permit to operate the OCC incinerator.

Such renewal shall clarify that OCC may conduct trial burns to document the capability of OCC's incinerator to meet regulatory performance and DRE standards for materials containing PCBs greater than 50 ppm, 2,3,7,8-TCDD, and Mirex without a NYSDEC permit modification, provided that OCC submits to the NYSDEC Division of Air Resources a satisfactory trial burn plan prior to conducting the testing.

(b) OCC will promptly submit, and EPA/State will expeditiously process, as described in Paragraph 11 below, applications for governmental authorizations and permits to continue to store OCC wastes (including wastes containing PCBs greater than 50 ppm, 2,3,7,8-TCDD, and Mirex) at the Buffalo Avenue plant facility and to continue to use the OCC incinerator for the long-term destruction of the following process wastes (which do not contain PCBs greater than 50 ppm, 2,3,7,8-TCDD, or Mirex): (i) wastes generated at OCC facilities located in Niagara Falls, Grand Island, and North Tonawanda, New York; and (ii) wastes generated from the chlorine process at the OCC production facility located at Tacoma, Washington. Such applications will request the following: (i) renewal of OCC's existing air and Part 373 (formerly 360) permits for the incineration facility, and conversion of interim status authorization under Part 373 for all hazardous waste units at the Buffalo Avenue plant (other than the incineration facility) to a Part 373 permit from NYSDEC; and (ii) conversion

of interim status authorization under RCRA to a RCRA permit from EPA. The State has determined that such applications do not require preparation of an environmental impact statement. Through compliance with the schedule set forth in Attachment B, EPA/State will use their best efforts to make final determinations concerning the applications described in this subparagraph prior to the date on which NYSDEC is scheduled pursuant to Attachment A to issue a public notice of a draft permit and DEIS for the applications described in subparagraph (c) below.

(c) OCC will submit, and EPA/State will process, as described in Attachment A and Paragraph 11, complete applications for permits and permit modifications for use of OCC's incinerator for the long-term destruction of certain additional wastes, as described below. Such applications will request the following: (i) modification of OCC's then-existing air permit and then-existing Part 373 permit from NYSDEC to incinerate the wastes described below; (ii) issuance of a RCRA permit and TSCA authorization from EPA to incinerate the wastes described below; and (iii) authorizations and permit modifications from EPA and NYSDEC to construct a new storage tank and/or to utilize existing tanks to store the wastes described below at the Buffalo Avenue Plant. Such applications will seek authorization to incinerate and store the following OCC remedial wastes (including wastes containing PCBs in excess of 50 ppm, Mirex or PCDDs) generated as a result of remedial activities

(including investigative activities related thereto): (i) wastes generated at, or presently located on or adjacent to, OCC facilities located in Niagara Falls and North Tonawanda, New York [substitute: (i) liquids generated as a result of remedial activities undertaken within the State of New York to address either wastes presently located on or adjacent to any OCC facility located in Niagara Falls or North Tonawanda, New York, or wastes generated at an OCC facility] (ii) wastes presently located on or adjacent to the OCC production facility in Tacoma, Washington; (iii) wastes identified pursuant to the trial burn plan described in Paragraph 8 located on or adjacent to the OCC production facility in Taft, Louisiana. If the aforementioned wastes are located at multi-generator disposal sites, OCC remedial wastes shall be also deemed to include the following wastes: (i) the segregatable portion of wastes from such multi-generator disposal sites which was generated at the aforementioned OCC facilities; and (ii) all wastes generated as a result of integrated remedial activities undertaken at multi-generator disposal sites which are presently the subject of litigation before this Court between EPA and/or the State and OCC. After completion of the permitting process described in Paragraph 11 and Attachment A, OCC reserves its right to seek authorizations and permits to use the OCC incinerator to incinerate other wastes (including wastes containing PCBs in excess of 50 ppm, PCDD or Mirex) if OCC analyzes representative

samples from the proposed new waste stream and otherwise complies with applicable statutory and regulatory requirements. As used in this subparagraph, "OCC facility" or "OCC facilities" means any property presently owned or controlled (e.g., via easement) by OCC (or any corporate predecessor, successor, or current affiliate of OCC).

(d) EPA/State and OCC will take all actions, consistent with their legal authority, necessary to assure compliance with the schedule set forth in Attachment A, which describes the processes which the parties will follow to obtain authorizations for the trial burns and for the authorization and permits described in subparagraph (c). In addition, EPA/State and OCC will take all actions, consistent with their legal authority, necessary to assure compliance with the schedule set forth in Attachment B, which describes the processes which the parties will follow to obtain the authorizations and permits described in subparagraph (b). To the extent that applicable statutory and regulatory requirements provide the parties with discretion to act, such actions shall be undertaken in a manner which is consistent with such schedules; provided, however, that nothing herein shall be construed to require any party hereto to act in a manner which is arbitrary and capricious or otherwise unlawful.

(e) The draft permits concerning the applications described in subparagraph (b) shall include,

pursuant to 40 C.F.R. § 264.101 and 6 NYCRR § 373-2.6(1), a plan for corrective action, or if insufficient information exists at the time of completing such applications to determine the extent of the corrective action required (if any), such draft permits will include a schedule which establishes a time frame to obtain information necessary for such determination and to initiate any such corrective action. [In order to assess what further investigations (if any) are necessary to obtain the aforementioned information, the following activities shall be undertaken in accordance with the schedule set forth in Attachment B: a work plan for a site investigation at the Buffalo Avenue Plant, ^{including} ~~consisting of~~ the collection of ~~approximately 30~~ surface soil samples and analysis of the samples for indicator chemicals, shall be drafted and discussed by the parties; a site investigation work plan shall be promptly finalized and implemented; and following receipt of a report containing the results of the site investigation, the parties shall discuss and use their best efforts to expeditiously finalize a remedial investigation work plan to establish the extent and nature of releases requiring corrective action (if any).] Following a determination specifying the required corrective action (if any), applicable federal and state permits shall be modified to include a permit condition which incorporates such corrective action.

we will have enough flexibility

(f) Notwithstanding the provisions of Paragraph 13, the requested governmental authorizations described herein and in Attachments A and B shall not be deemed to require the convening of a Siting Board pursuant to 6 NYCRR Part 361; provided, however, that this determination may be reconsidered if the results of the PCB and NAPL trial burns indicate that there is projected to be an increase in environment and health risks resulting from the long-term incineration of PCB and PCDD wastes substantially above the risks for long-term incineration projected in Section 4.3 of the draft environmental impact statement described in Paragraph 11(c).

(g) In order to defray additional regulatory expenses resulting from the long-term incineration of the off-site wastes described in subparagraph (c) above and to insure an adequate level of governmental oversight, any permit for the long-term incineration of such wastes will include a condition that OCC make a payment to NYSDEC of \$_____ per year for NYSDEC personnel to monitor the transportation, storage, and incineration of those off-site wastes described in subparagraph (c). Nothing herein shall be deemed to confer on such personnel any rights or obligations which they do not possess under applicable state law or regulations.

11. (a) The schedules set forth in Attachments A and B have been designed to secure expeditious governmental review

and consideration of OCC's applications to utilize its incinerator to destroy the OCC remedial wastes described in Paragraph 10(c) and to continue to use its incinerator and other facilities as described in Paragraph 10(b), while at the same time assuring that all impacts of the proposed actions are thoroughly assessed in accordance with 6 NYCRR Part 617, and that there is opportunity for public comment and participation in the permitting and authorization processes. The Attachments set forth the respective obligations of EPA/State and OCC and indicate the opportunity for public participation during the governmental authorization processes.

(b) No final approval will be given by EPA/State on OCC's applications described in Paragraph 10(c) unless and until OCC successfully completes each of the trial burns, as described in Paragraph 7, and it is determined through the processes described herein that OCC's incinerator is capable of the long-term destruction of the wastes described in Paragraph 10(c) in accordance with all applicable federal and state statutory and regulatory requirements.

(c) The references in this Paragraph 11 and in Attachments A and B to various statutes, regulations, and processes are subject to the provisions of Paragraph 13 below. However, in order to resolve disputes among the parties regarding issues described in the Memorandum of Understanding and without admitting that all the designated processes are legally

required, OCC will submit to NYSDEC a draft environmental impact statement ("DEIS") relating to the incineration of wastes described in subparagraph 10(c). The DEIS will, in accordance with 6 NYCRR Part 617, address the impacts associated with conducting the PCB and Hyde Park NAPL trial burns and long-term incineration of such wastes. Following NYSDEC review, the NYSDEC will provide notice of availability to the public of the DEIS relating to the PCB and Hyde Park NAPL trial burns. A 30-day public comment period will follow. During this comment period, NYSDEC will conduct a legislative hearing to receive comments from the public on the PCB and Hyde Park NAPL trial burns. At the close of the public comment period, NYSDEC will review the comments received. The DEIS and the trial burn plan will be revised if, in light of the public comments, it is determined that such revisions are warranted. NYSDEC will then finalize the portions of the DEIS relating to the PCB and the Hyde Park NAPL trial burns and will issue a final environmental impact statement ("FEIS") relating to such burns, and make it available for public consideration. Thereafter, NYSDEC will issue a final decision whether to authorize the PCB trial burn and Hyde Park NAPL trial burn in accordance with the terms and conditions of Paragraph 7; and likewise, following the close of the public comment period, EPA will review and respond to comments received and will issue a final decision regarding the PCB and Hyde Park NAPL trial burns.

(d) Those portions of the DEIS that address the EPA/State authorizations to use OCC's incinerator for the long-term destruction of OCC remedial wastes will also be made available to the public so that the public has the opportunity to comment on the scope of the DEIS. These sections of the DEIS will not be considered complete until after the trial burns have been completed and data relating thereto has been incorporated into the DEIS. The DEIS will then be made available to the public and another legislative hearing and a public comment period will be scheduled. The State will also conduct an adjudicatory hearing concerning the requested governmental authorizations if the Commissioner of NYSDEC determines, in accordance with 6 NYCRR § 621.7, that an adjudicatory hearing is warranted. Thereafter, the NYSDEC will proceed as set forth in 6 NYCRR Parts 621 and 624 and as set forth in Attachment A before issuing a final decision on OCC's application. Likewise, the EPA will solicit, review, and respond to public comments, as set forth in Attachment A, before issuing a final decision on OCC's application.

12. (a) In the event that any party hereto fails, or anticipates a failure, to take action in accordance with the schedule set forth in Attachments A and B, the Court and the other parties hereto shall immediately be so notified. In addition, in the event that any party hereto fails, or anticipates a failure, to take action in accordance with such schedules, any party hereto may petition the Court for such relief

as may be appropriate in the circumstances including, without limitation, the relief described in subparagraph 8(d)(2) of the Settlement Agreement and subparagraph E(9)(c) of Addendum I of the Settlement Agreement.

(b) The parties hereto shall utilize their best efforts to resolve any dispute arising under this Stipulation and Order by prompt agreement among the parties. If any dispute directly affecting the incineration of Hyde Park NAPL (including, without limitation, the schedule for processing OCC applications for any of the aforementioned trial burns for the long-term incineration of such NAPL) cannot be resolved, any party may submit it to the Court for resolution. If any dispute not directly affecting the incineration of Hyde Park NAPL (including, without limitation, disputes relating to the applications described in subparagraph 10(b)) cannot be resolved by agreement of the parties hereto, it shall be resolved by a federal court if it arises under federal law, by a state court if it arises under state law, or by a court of competent jurisdiction if it arises under both federal and state law.

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13. Nothing in this Stipulation and Order shall be construed as an adjudication or determination of any legal issue or as a modification or waiver of the rights or legal positions of any party hereto on any issue arising in any subsequent proceeding before this Court pursuant to Paragraph 12

above, or in any other administrative or judicial proceedings,
arising under any statute or regulation.

14. This Stipulation and Order shall become effective
upon its approval and issuance by the Court.

THE STATE OF NEW YORK BY:

THE UNITED STATES BY:

Ann L. Goldweber
Assistant Attorney General
The New York State
Department of Law

Wayne R. Walters
Senior Counsel
U.S. Department of Justice

OCCIDENTAL CHEMICAL
CORPORATION BY:

George A. Shanahan
Attorney
Office of Regional Counsel
U.S. Environmental Protection
Agency

Keith S. Watson
Piper & Marbury

Martin B. Wasser
Phillips, Nizer, Benjamin,
Krim & Ballon

DATED: July __, 1986

APPROVED AND SO ORDERED:

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

SCHEDULE FOR PROCESSING APPLICATION
DESCRIBED IN SUBPARAGRAPH 10(c) OF THE STIPULATION

1986

July 16

NYSDEC issues public notice and publishes in the Environmental Notice Bulletin (ENB) the public availability of that portion of DEIS relating to the trial burns and preliminary draft of DEIS for permitted (*i.e.*, long-term) operation of the incinerator; issues proposed determination on the adequacy of trial burn plan described in Paragraph 8 of the Stipulation, requests public comments on DEIS relating to the trial burns and the trial burn plan; requests public comments on scoping of DEIS for permitted operation; issues notice of legislative hearing on the trial burns and DEIS relating to the trial burns; and issues notice of public scoping session on DEIS for permitted operation. EPA issues notice of proposed approval of NAPL trial burn, subject to satisfaction of conditions specified in subparagraphs 7(b) and 7(c) of the Stipulation and notice of public comment service on proposed approval.

July 18

OCC applies for State authorizations required for transportation relating to PCB and NAPL trial burns.

August 5

Legislative hearing conducted on portion of DEIS relating to trial burns and trial burn plan. EPA and OCC participate in hearing. Informational summary distributed at hearing.

August 6

Public scoping session conducted by NYSDEC on DEIS for permitted operation. EPA and OCC participate. Informational summary distributed at session.

August 18	Close of NYSDEC public comment period on portions of DEIS relating to trial burns. Close of comment period on EPA proposed approval of NAPL trial burn.
August 19	NYSDEC issues all authorizations required for transportation relating to PCB and NAPL trial burns.
August 21	EPA, NYSDEC and OCC meet to review public comments on portions of DEIS relating to trial burns and trial burn plan.
August 28	OCC submits complete revisions to DEIS relating to trial burns and trial burn plan, if necessary, to address public comments.
September 10	NYSDEC issues for public comment final EIS (FEIS) relating to PCB and NAPL trial burns; notice of completion of FEIS published in ENB.
September 22	Close of public comment period on FEIS on PCB and NAPL trial burns. NYSDEC issues FEIS and findings on PCB and NAPL trial burns. EPA responds to public comment on trial burns. NYSDEC and EPA issue final decision on PCB trial burn and final decision on NAPL trial burn subject to satisfaction of conditions specified in subparagraphs 7(b) and (c) of the Stipulation.
September 29	OCC starts Process Waste trial burn; immediately following completion of Process Waste trial burn, OCC starts PCB trial burn.
October 6	Close of comment period related to scope of DEIS for permitted operation.
October 20	NYSDEC meets with OCC and provides final comments on scope of DEIS for permitted operations.
December 8	OCC submits results of Process Waste trial burn to EPA/NYSDEC.
December 18	EPA/State/OCC conduct technical meeting concerning the results of the Process Waste trial burn.

December 23

OCC submits to EPA/NYSDEC for comment applications described in subparagraph 10(c) of the Stipulation ("10(c) applications").

1987

January 6

OCC submits results of PCB trial burn to EPA and NYSDEC.

January 20

EPA/State and OCC conduct technical meeting concerning results of PCB trial burns.

January 23

EPA gives public notice of NAPL trial burn and public information meeting.

February 6

EPA and NYSDEC advise OCC, the Court and the public if they conclude that results of Process Waste and PCB trial burns do not satisfy conditions specified in Paragraphs 7(b) and (c) of the Stipulation.

February 10

EPA conducts public information meeting relating to NAPL trial burn. NYSDEC participates in meeting.

February 16

EPA/State meet with OCC and provide comments on 10(c) applications.

March 30

OCC submits to EPA/NYSDEC for comment revised 10(c) applications and revised DEIS on permitted operation.

April 6

Subject to satisfying conditions specified in Paragraph 7 of the Stipulation, OCC starts NAPL trial burn.

May 14-15

EPA and NYSDEC meet with OCC and provide comments on revised 10(c) applications and revised DEIS.

June 12

OCC submits results of NAPL trial burn to EPA/NYSDEC.

June 26

OCC submits to EPA/NYSDEC for comment revised 10(c) applications and revised DEIS.

June 29

EPA/NYSDEC and OCC conduct technical meeting concerning results of NAPL trial burn.

July 7-8 EPA and NYSDEC meet with OCC and provide comments on revised 10(c) applications and revised DEIS.

July 13 EPA and NYSDEC advise OCC, the Court and the public if they conclude that results of NAPL trial burns do not satisfy conditions specified in subparagraph 7(d) of the Stipulation.

July 27 OCC submits to EPA/NYSDEC completed 10(c) applications and complete revised DEIS for permitted operations.

August 12 EPA/State and OCC conduct technical meeting concerning status of 10(c) applications, including operating conditions for the incinerator.

August 19 NYSDEC issues public notice (for publication in local newspapers and radio announcements) and publishes in the Environmental Notice Bulletin (ENB) the public availability of the complete 10(c) applications, draft permit, and DEIS relating to permitted operations; requests public comments on draft permit DEIS; and issues notice of legislative and adjudicatory hearings and issues conference on the draft permit concerning 10(c) applications to NYSDEC and the DEIS relating to permitted operation and establishes time periods for requesting party status at adjudicatory hearing. EPA issues notice of proposed approval of draft permit and proposed authorizations concerning 10(c) applications to EPA and issues notice of public comment period and public hearing on the draft permit and authorizations.

September 29 Deadline for filing request for party status at adjudicatory hearing.

October 6 EPA conducts public hearing on draft permit and proposed authorizations concerning 10(c) applications to EPA. Legislative hearing conducted by NYSDEC on draft permit concerning 10(c) applications to NYSDEC and DEIS for permitted operations. Close of public comment period established by EPA and NYSDEC.

October 7 Issues conference conducted by NYSDEC regarding parties, issues and witnesses for adjudicatory hearing on draft permit concerning 10(c) applications to NYSDEC.

October 17 Ruling on issues and party status for adjudicatory hearing. Adjudicatory hearing begins and runs continuously on day-to-day basis so as to be completed by November 23, 1987.

December 4 OCC submits response to public comments received on DEIS relating to permitted operation.

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January 5 Adjudicatory hearing record closes (responses of other parties to OCC's submitted response to public comments on DEIS received, briefs submitted, transcript received).

March 9 NYSDEC Commissioner issues findings and decision on draft permit concerning 10(c) applications; the hearing report constitutes the FEIS, subject to public comment. EPA issues final decision on draft permit concerning 10(c) applications.

March 21 Close of public comment period on FEIS for permitted operations. Effective date of EPA/State permits and authorizations for a permitted operation.

ATTACHMENT B

SCHEDULE FOR PROCESSING APPLICATION
DESCRIBED IN SUBPARAGRAPH 10(b) OF THE STIPULATION

1986

July 31 OCC submits to EPA/NYSDEC for comment applications described in subparagraphs 10(b) and (e) of the Stipulation ("10(b) applications").

August 1 EPA/NYSDEC provide to OCC for comment draft site investigation work plan described in subparagraph 10(e).

August 12 EPA/NYSDEC and OCC conduct technical meeting to discuss draft site investigation work plan.

September 2 Site investigation work plan finalized and approved by EPA/NYSDEC.

September 19 EPA/NYSDEC meet with OCC and provide comments on 10(b) applications.

September 22 Field activities initiated to implement site investigation work plan.

September 29 OCC starts Process Waste trial burn (including stack testing for emission of PCDDs and PCDFs).

November 17 Final report submitted on results of site investigation.

November 21 OCC submits to EPA/NYSDEC for comment revised 10(b) applications.

December 2 EPA/NYSDEC conduct technical meeting to discuss results of site investigation and initiate efforts to finalize a remedial investigation work plan described in subparagraph 10(e) by December 23, 1986.

Joint
Site Visit
OCC/State/EPA
to
lay
out
Sampling

O.K.

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✓

to EPA/NYSDEC

3 weeks

December 8 OCC submits results of Process Waste trial burn to EPA/NYSDEC.

December 18 EPA/NYSDEC technical meeting with OCC to discuss the results of the Process Waste trial burn and provide comments on revised 10(b) applications.

December 30 OCC submits to EPA/NYSDEC complete 10(b) applications.

1987

January 14 EPA/NYSDEC and OCC conduct technical meeting concerning status of 10(b) applications, including proposed operating conditions for the incinerator.

January 21 NYSDEC issues public notice (for publication in local newspapers and radio announcements) and publishes in Environmental Notice Bulletin (ENB), notice of completed application, SEQRA determinations, and draft permit concerning 10(b) applications to NYSDEC, issues notice legislative and/or adjudicatory hearings and issues conference (if required), date for requesting party status at adjudicatory hearing, and public comment period on draft permit concerning 10(b) applications. EPA issues notice of draft permit concerning 10(b) application to EPA and notice of public comment period, public information meeting, and legislative hearing on the draft permit.

January 27 EPA conducts public information meeting relating to 10(b) applications to EPA.

March 6 Issues conference conducted by NYSDEC regarding need for adjudicatory hearing and, if so, regarding parties, issues and witnesses.

March 9 Close of public comment period on 10(b) applications to EPA and NYSDEC.

March 10 NYSDEC conducts legislative hearing on draft permit concerning 10(b) application to NYSDEC. EPA conducts legislative hearing on 10(b) application to EPA.

- March 17 Ruling on need for adjudicatory hearing and, if so, ruling on issues and party status at adjudicatory hearing.
- March 25 NYSDEC begins adjudicatory hearing (if required) to run continuously on an day-to-day basis to be completed by April 8, 1987.
- April 9 If no adjudicatory hearing conducted, EPA/State issue final decision on 10(b) applications; [effective date of EPA/State permits and authorizations relating to 10(c) applications.]
- May 8 Hearing record of adjudicatory hearing closes (transcript received, briefs submitted, if applicable).
- July 8 If adjudicatory hearing conducted, EPA/NYSDEC issue findings and final decision on 10(b) applications; effective date of EPA/State permits and authorizations relating to 10(b) applications.